

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

DECISION

LVO/153307

PRELIMINARY RECITALS

Pursuant to a petition filed November 01, 2013, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Public Assistance Collection Unit (PACU) to issue a levy against petitioner and apply it against a prior overpayment of child care benefits, a telephonic hearing was held on December 12, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the petitioner has exhausted her appeal rights concerning the child care overpayment and whether she has made a payment of this public assistance overpayment debt or the levy is being applied based on a mistaken identity.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families 201 East Washington Avenue Madison, Wisconsin 53703

By: Keisha Love

Milwaukee Early Care Administration - MECA Department of Children And Families 1220 W. Vliet St. 2nd Floor, 200 East Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #) is a resident of Milwaukee County.

- 2. By notices dated May 9 and 10, 2013 the agency informed petitioner that she was overpaid \$25,036.22 in child care provided from April 2, 2012 January 31, 2013 due to client error. Those notices contained her appeal rights. See Exhibit B1-B3. Petitioner did not timely appeal from those notices.
- 3. On October 20, 2013 the Department of Children and Families (DCF), Public Assistance Collection Unit (PACU) sent a notice of a levy issuance to the petitioner, stating that it found the debt (child care overpayment) delinquent. That notice is the subject of this decision and informed her that she had the right to appeal the decision by requesting a hearing with the Division of Hearing & Appeals and that the appeal was limited to questions of prior payment and mistaken identity of the debtor.
- 4. Petitioner is the person who owes the debt in question. The agency has not sent a notice or proceeded against an incorrect individual based on mistaken identity.
- 5. Petitioner has not made any payment on the overpayment for child care funds personally, but agreed that some payment had been made by the second parent through garnishment.
- 6. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on November 1, 2013.

DISCUSSION

Where an individual is subject to a specified overpayment of public assistance, a county, tribal governing body, W-2 agency, or the department may recover an overpayment by more than one method of collection at the same time. Wis. Stat. §49.195; Wis. Admin. Code §DCF 101.23(4). A delinquent debt may be subject to warrant and execution under §49.195 (3m); levy under §49.195 (3n).; setoff against a refund under §\$49.85 and 71.93, Stats.; and other authorized collection methods. Wis. Admin. Code §DCF 101.23(8). A debt shall be considered delinquent if the department does not receive a debtor's payment by the due date 3 times over the life of the debt. Id.

Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227, Stats., within 20 days from the date on the service of levy. In the instant case, the department has notified petitioner that it was pursuing a levy against the petitioner.

The statutory provisions of import in this case are as follows:

Wis. Stat. §49.195(3n)(e), which states:

3. For purposes of an adjudication under this paragraph, the determination of the debt upon which the interest or lien of the department is based is conclusively presumed to be valid.

Wis. Stat. §49.195(3n)(1), which states:

(1) If no appeal or other proceeding for review permitted by law is pending and the time for taking an appeal or petitioning for review has expired, the department shall make a demand to the debtor for payment of the debt that is subject to levy and give notice that the department may pursue legal action for collection of the debt against the debtor. The department shall make the demand for payment and give the notice at least 10 days prior to the levy, personally or by any type of mail service that requires a signature of acceptance, at the address of the debtor as it appears on the records of the department. The demand for payment and notice shall include a statement of the amount of the debt, including interest and penalties, and the name of the debtor who is liable for the debt. The

debtor's refusal or failure to accept or receive the notice does not prevent the department from making the levy. Notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy.

Wis. Stat. §49.195(3n)(s), which states:

(s) Any debtor who is subject to a levy proceeding made by the department has the right to appeal the levy proceeding under ch. 227. The appeal is limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. The levy is not stayed pending an appeal in any case where property is secured through the levy.

Petitioner has timely appealed the levy proceeding. The time for taking an appeal on the underlying overpayment has expired however and therefore this appeal must be limited to questions of prior payment of the debt that the department is proceeding against and mistaken identity of the debtor. Wis. Adm. Code §DCF 101.23(10)(c)(3).

Petitioner did not dispute that she is the individual subject to the overpayment determination in the instant case and agreed that some payment had been made by the second parent through garnishment. However she argued that she was "getting the run around" from the agency on how to appeal the underlying overpayment. Regardless of what happened after she got the notice, the agency met its burden by issuing the notice and including the reason for the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and the notice of the right to appeal the overpayment determination as required under Wis. Adm. Code §DCF 101.23. Both overpayment notices (dated May 9 and 10, 2013) contained the explicit instructions on how and where to file an appeal, and petitioner has missed that window of opportunity.

The evidence shows that that the agency properly seeks to recover that overpayment through tax intercept, garnishments and levy. Petitioner can still contact the PACU to see if a repayment agreement can be established to repay the debt, if the funds have not already been recovered.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, <u>Wisconsin Socialist Workers 1976 Campaign Committee v. McCann</u>, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

- 1. There is no jurisdiction to consider the merits of the child care overpayment as the petitioner had an opportunity for a hearing on the matter, but she did not timely appeal from the original overpayment notices.
- 2. The levy is being applied against the correct individual and there is no evidence that the department is not pursuing the correct amount of the debt.
- 3. The department acted correctly in instituting levy proceedings against the petitioner since the petitioner has not already made a prior full payment of her child care overpayment.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee, Wisconsin, this 8th day of January, 2014

\sKelly Cochrane Administrative Law Judge Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator Suite 201 5005 University Avenue Madison, WI 53705-5400 Telephone: (608) 266-3096 FAX: (608) 264-9885 email: DHAmail@wisconsin.gov Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on January 8, 2014.

Milwaukee Early Care Administration - MECA Public Assistance Collection Unit